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BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

BOB STUMP - Chairman  
GARY PIERCE  
BRENDA BURNS  
BOB BURNS  
SUSAN BITTER SMITH

2013 APR 25 P 1:30

Arizona Corporation Commission

DOCKETED

APR 25 2013

DOCKETED BY

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IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER COMPANY,  
LLC FOR APPROVAL OF FINANCING TO  
INSTALL A WATER LINE FROM THE WELL ON  
TIEMAN TO WELL NO. 1 ON TOWERS.

DOCKET NO. W-04254A-12-0204

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER COMPANY,  
LLC FOR APPROVAL OF FINANCING TO  
PURCHASE THE WELL NO. 4 SITE AND THE  
COMPANY VEHICLE.

DOCKET NO. W-04254A-12-0205

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER COMPANY,  
LLC FOR APPROVAL OF FINANCING FOR AN  
8,000-GALLON HYDRO-PNEUMATIC TANK.

DOCKET NO. W-04254A-12-0206

IN THE MATTER OF THE RATE APPLICATION  
OF MONTEZUMA RIMROCK WATER  
COMPANY, LLC.

DOCKET NO. W-04254A-12-0207

JOHN E. DOUGHERTY,  
  
COMPLAINANT,  
  
V.

DOCKET NO. W-04254A-11-0323

MONTEZUMA RIMROCK WATER  
COMPANY, LLC,

RESPONDENT.

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF A  
RATE INCREASE.

DOCKET NO. W-04254A-08-0361

IN THE MATTER OF THE APPLICATION OF  
MONTEZUMA RIMROCK WATER  
COMPANY, LLC FOR APPROVAL OF A  
FINANCING APPLICATION.

DOCKET NO. W-04254A-08-0362

PROCEDURAL ORDER

BY THE COMMISSION:

On April 15, 2013, a procedural conference was held regarding a discovery dispute between

1 Montezuma Rimrock Water Company, LLC ("Montezuma") and John Dougherty. Montezuma and  
 2 the Commission's Utilities Division ("Staff") appeared through counsel, and Mr. Dougherty appeared  
 3 pro se. The discovery dispute arose because Mr. Dougherty did not provide certain information and  
 4 documents in response to Montezuma's first set of data requests to him. This was followed by  
 5 Montezuma's Motion to Compel,<sup>1</sup> Mr. Dougherty's Motion to Deny Company's Motion to Compel;  
 6 Motion for Protective Order; and Montezuma's request for a procedural conference to resolve the  
 7 discovery dispute.

8 At the procedural conference on April 15, 2013, the disputed data requests were discussed at  
 9 length, with both Montezuma and Mr. Dougherty providing their positions as to each. Montezuma  
 10 and Mr. Dougherty were able to reach agreement as to some of the disputed data requests, a number  
 11 of which were withdrawn or narrowed by Montezuma, and rulings were made from the bench on  
 12 most of the remaining disputed data requests. Montezuma and Mr. Dougherty were unable to reach  
 13 agreement as to the data request designated as "MRWC 1.9," including its subparts (a), (b), and (c).

14 MRWC 1.9 reads as follows:

15 **MRWC 1.9.** Provide copies of any and all written mailings,  
 16 communications, and/or communications [sic] between you and any customer  
 17 of Montezuma Rimrock Water Company and/or any persons residing within  
 18 the Company's service area and/or the Rimrock area relating to the Company,  
 19 Ms. Patsy Olsen, any property of the Company, any Company operations  
 20 and/or any regulatory and/or legal proceedings involving the Company. This  
 21 request includes, but is not limited to, any and all letters, flyers, meeting  
 22 notices, emails, public notices, meeting agendas, and other similar documents.

23 (a) Provide copies of any and all documents, photographs, filings  
 24 and/or other materials exchanged between you and any customer of  
 25 Montezuma Rimrock Water Company and/or any persons residing within the  
 26 Company's service area and/or the Rimrock area.

27 (b) Provide copies of any and all communications (including  
 28 electronic communications) between you and Ivo Buddeke, Jimmy Dufresne,  
 Lucy Couch, Judy Cooper, Josh Burch, Alicia Burch, Diana Mitchell, Jason  
 Harding, Williams [sic] Kopko and/or Scott Hall relating to the Company, Ms.  
 Patsy Olsen, any property of the Company, any Company operations and/or  
 any regulatory and/or legal proceedings involving the Company. This request  
 includes, but is not limited to, any and all written and/or electronic  
 communications, including texting.

(c) Provide copies of any and all notes, meeting notes, video and/or  
 audio recordings and other similar documents relating to any and all meetings

<sup>1</sup> This Motion to Compel was addressed in a Procedural Order issued on April 4, 2013.

1 attended by you with any customer of Montezuma Rimrock Water Company  
2 and/or any persons residing within the Company's service area and/or the  
3 Rimrock area relating to the Company, Ms. Patsy Olsen, any property of the  
4 Company, any Company operations and/or any regulatory and/or legal  
5 proceedings involving the Company.

6 Montezuma asserted that Mr. Dougherty has no valid legal basis for refusing to provide  
7 documentation responsive to MRWC 1.9. Montezuma also asserted that it is primarily interested in  
8 receiving Mr. Dougherty's communications with the individuals named in MRWC 1.9(b) and  
9 tentatively offered to accept only the communications back and forth between Mr. Dougherty and  
10 those individuals during the period from 2009-2013, although Montezuma stated that it also desired  
11 to ask any follow-up questions that may arise from those communications. Montezuma asserted that  
12 the communications sought are relevant because they go to Mr. Dougherty's motivation for  
13 participating in the cases involving Montezuma, which Montezuma asserted may have been  
14 influenced by the individuals named.<sup>2</sup> Montezuma did not specify why these particular individuals  
15 are important, which of these individuals in particular may have influenced Mr. Dougherty, why such  
16 individuals would desire to have Mr. Dougherty participate in the cases involving Montezuma and  
17 would be able to influence Mr. Dougherty's actions, or why Montezuma believes that Mr.  
18 Dougherty's motivations regarding this matter may come from sources outside himself. Montezuma  
19 also repeatedly asserted that Mr. Dougherty's participation in the cases involving Montezuma is  
20 motivated by a "vendetta" against Montezuma.

21 Mr. Dougherty has already provided Montezuma a flyer sent out by him providing notice and  
22 advocating for others to participate at the scheduled hearing for this matter. Mr. Dougherty  
23 acknowledged that he possesses other communications that would be responsive to MRWC 1.9, but  
24 strongly opposed providing any of them to Montezuma, asserting that the provision of those  
25 communications, which involve non-party and non-witness individuals, would invade the privacy of  
26 those individuals, have a chilling effect on the community, intimidate citizens, and isolate Mr.  
27 Dougherty from his neighbors. Mr. Dougherty also asserted that the discovery requested is unduly  
28 burdensome given the needs of the case, as it would not be easy to locate the responsive documents,

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<sup>2</sup> Montezuma answered "maybe," or words to that effect, when asked if it was suggesting that Mr. Dougherty was a marionette and that these individuals were pulling his strings in this matter.

1 and that the documents requested are not relevant, as his reason for seeking intervention and filing a  
2 Complaint is not an issue before the Commission in this matter. Mr. Dougherty also avowed that he  
3 will not call any of the individuals named in MRWC 1.9(b) as witnesses and asserted that Mr.  
4 Buddeke has never been a customer of Montezuma and that the Burches and Mr. Kopko no longer  
5 reside in the area.

6 It is now necessary and appropriate to resolve the discovery dispute by ruling on MRWC 1.9.

7 The purpose of discovery is to allow parties to prepare for hearing because discovery allows  
8 parties to know what the issues are and what the other parties' positions are, so that hearings can be  
9 completed and disputes can be resolved as efficiently as possible. The Commission has a great deal  
10 of discretion in ruling on discovery issues. While A.A.C. R14-3-101 provides that the Arizona Rules  
11 of Civil Procedure govern when procedure is not otherwise set forth, the rule also provides that the  
12 Commission's rules of practice and procedure shall be liberally construed to secure just and speedy  
13 determination of all matters; generally authorizes the Commission or presiding officer to waive  
14 application of the rules for good cause; and dictates that special orders of the Commission, rather than  
15 the rules, govern specified procedural matters in rate cases, including discovery. Thus, unlike a court  
16 of general jurisdiction, the Commission is not bound by the Arizona Rules of Civil Procedure in  
17 regard to discovery issues. In addition, and significantly for purposes of this matter, the  
18 Commission's jurisdiction is much more limited than is that of a general jurisdiction court, in that the  
19 Commission has jurisdiction over public service corporations, not the general public. Thus, for  
20 example, the Commission cannot entertain counterclaims against a non-public-service corporation  
21 Complainant or Intervenor and cannot regulate the behavior of a non-public-service corporation  
22 Complainant or Intervenor except as to procedural requirements imposed to participate in  
23 Commission proceedings.

24 While the scope of discovery under Rule 26(b) and at the Commission is broad, the requesting  
25 party must be able to establish the relevance to the case of the information sought and that the  
26 information sought is reasonably calculated to lead to the discovery of admissible evidence.  
27 Likewise, to the extent that a party seeks to limit discovery, that party must be able to establish that  
28 justice requires the limitation to protect the party from annoyance, embarrassment, oppression, or

1 undue burden or expense, and that there is good cause to limit the discovery because the information  
2 is privileged, the information is not relevant to the subject matter of the case, or one of the standards  
3 under Rule 26(b)(1)(C) is met. Rule 26(b)(1)(C) provides that discovery may be limited if a court  
4 determines that (1) the discovery sought is unreasonably cumulative or duplicative or is obtainable  
5 from another source that is more convenient, less burdensome, or less expensive; (2) the party  
6 seeking discovery has had ample opportunity to obtain the information sought through discovery in  
7 the case; or (3) the discovery is unduly burdensome or expensive, given the needs of the case, the  
8 amount in controversy, limitations on the parties' resources, and the importance of the issues at stake  
9 in the case.

10       It is first noted that MRWC 1.9 is overly broad on its face, in that it does not limit the  
11 communications sought to any time period related to this matter. Because Montezuma remedied this  
12 problem at the procedural conference by agreeing to limit the communications to the time period of  
13 2009 to 2013, the overbreadth issue does not require any further scrutiny. However, Montezuma is  
14 directed to be more precise when making discovery requests, as facially overbroad requests are  
15 almost certain to result in a dispute of some kind.

16       Before performing any other analysis regarding the discoverability of the information sought  
17 through MRWC 1.9, it is necessary to determine whether MRWC 1.9 seeks relevant information, *i.e.*,  
18 whether it is reasonably calculated to lead to the discovery of admissible evidence. Montezuma's  
19 position is that the communications requested will provide insight as to Mr. Dougherty's motivations  
20 and that this type of discovery is generally permitted. If Mr. Dougherty were to serve as a fact  
21 witness at the evidentiary hearing for this matter, his biases, prejudices, and motivations generally  
22 would be relevant and discoverable, as witness bias often has a bearing on witness credibility.  
23 However, Mr. Dougherty is a party in this matter and is representing himself without benefit of an  
24 attorney. As a result, Mr. Dougherty's role is to serve as an advocate for his position as to any facts  
25 established. This role greatly reduces the importance of any evidence of biases or prejudices held by  
26 him. Additionally, through his many filings in this matter thus far, Mr. Dougherty has revealed that  
27 his position in this matter is largely based upon his interpretation of documentation prepared by and  
28 obtained from governmental agencies or other third-party institutions. Montezuma has not alleged

1 that Mr. Dougherty's accurately and impartially recounting events directly witnessed by him or  
2 providing factual information uniquely within his knowledge will be crucial in this case. This also  
3 greatly reduces the importance of any evidence of biases or prejudices held by Mr. Dougherty.  
4 Montezuma has not provided any indication of what information it expects to find regarding the  
5 named individuals' potential influence upon Mr. Dougherty and has not explained in any way why  
6 communications between Mr. Dougherty and those named individuals are reasonably expected to  
7 lead to the discovery of admissible evidence. Even if Montezuma were to establish that Mr.  
8 Dougherty's participation in this matter were influenced and motivated by his association with any of  
9 the named individuals, the significance of such influence to any issue in this matter has not been  
10 identified by Montezuma. It is Montezuma's actions, not those of Mr. Dougherty, that are at issue in  
11 this matter. Montezuma has failed to establish that MRWC 1.9 meets the threshold requirement of  
12 relevancy.

13       Assuming, *arguendo*, that MRWC 1.9 was designed to seek relevant information, Arizona  
14 case law establishes that a party's need for bias-related information must be balanced against a  
15 witness's right to be free from unduly intrusive or burdensome inquiries that increase the cost, length,  
16 and burden of a case but provide little or no benefit in return. (*American Family Mut. Ins. Co. v.*  
17 *Grant*, 217 P.3d 1212 (Ariz. Ct. App. 2009).) As stated above, Mr. Dougherty is a party and  
18 advocate and not an expert witness. Montezuma has not established that Mr. Dougherty will serve as  
19 an important factual witness. Nor has Montezuma established that any information communicated to  
20 Mr. Dougherty by the named individuals is needed to support Montezuma's position or establish its  
21 case. Mr. Dougherty's filings thus far have been peppered with advocacy and opinion, and his  
22 testimony also is likely to include advocacy and opinion. Montezuma has not demonstrated that  
23 evidence of Mr. Dougherty's biases or prejudices, or of any influence that others may have upon him,  
24 would have value or would provide benefit in this matter. On the other side of the balance, Mr.  
25 Dougherty has asserted that the information sought would require a significant amount of time and  
26 effort to compile, if Mr. Dougherty could even compile all of the information.<sup>3</sup> The information

27 <sup>3</sup> It is unclear to this tribunal how Mr. Dougherty himself would be able to reproduce and provide text messages sent  
28 and received by him over the requested period. It seems likely that these would instead need to be obtained from Mr.  
Dougherty's wireless telecommunications carrier.

1 sought would also impact the privacy interests of non-witness and non-party individuals and could  
2 reveal Mr. Dougherty's own mental impressions, conclusions, opinions, and legal theories concerning  
3 this matter and other litigation involving Montezuma. The impact on individuals' privacy interests  
4 and on Mr. Dougherty's work product would necessitate a heightened level of scrutiny for  
5 Montezuma's requests. Yet, Montezuma has not established a substantial need for the information  
6 and has not established that substantially equivalent information is unavailable to Montezuma  
7 without undue hardship. Instead, Montezuma acknowledged that it has not even attempted to speak  
8 to any of the named individuals, which would certainly be required before Montezuma could assert  
9 that it is unable to obtain the information it seeks without undue hardship.

10 In light of the foregoing, requiring Mr. Dougherty to respond to MRWC 1.9 would result in  
11 annoyance, embarrassment, oppression, or undue burden or expense, and there is good cause for the  
12 Commission to protect a Complainant and Intervenor such as Mr. Dougherty from such result. Mr.  
13 Dougherty will not be required to respond to MRWC 1.9.

14 IT IS THEREFORE ORDERED that the information requested in **MRWC 1.9** is **not**  
15 **relevant** to this matter, and **Mr. Dougherty is not required to provide any additional response to**  
16 **MRWC 1.9.**

17 IT IS FURTHER ORDERED that the Administrative Law Judge may rescind, alter, amend,  
18 or waive any portion of this Procedural Order either by subsequent Procedural Order or by ruling at  
19 hearing.

20  
21 DATED this 25<sup>th</sup> day of April, 2013.

22  
23   
24 SARAH N. HARPRING  
25 ADMINISTRATIVE LAW JUDGE  
26  
27  
28

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